

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 8, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB141, SB221, SB392, 3/5/2001
Executive Action: SB164

HEARING ON SB221

Sponsor: SEN. ROYAL JOHNSON, SD5, BILLINGS

Proponents: Bob Olson, Montana Hospital Assn.
Tom Ebzery, St. Vincent's, Holy Rosary, St. James
Jani McCall, Deaconess Billings Clinic

Opponents: Pam Anderson, Home Health Care, Butte
Dr. Malcolm Pitts, Great Falls Clinic
Diane Hanson, Partners in Home Care, Missoula
Mona Jamison, Great Falls Clinic & Surgi-Center
Lila Montoya, Rocky Mountain Health Care
Debbie Boyle, Beta Factor Home Health Care, Butte
Debbie Folkerts, Rocky Mountain Home Care, Billings
Sarah Wemple, Partners in Home Health Care, Missoula
Drew Dawson, DPHHS

Opening Statement by Sponsor:

SEN. ROYAL JOHNSON, SD5, BILLINGS, said this bill would eliminate the Certificate of Need (CON) requirement for certain health care facilities. He said the Certificates of Need were designed to prevent overbuilding 25 years ago. He said they are not needed today, the hearings for them are expensive, and there is no need for another study. He added the bill will have zero fiscal impact if the committee puts on an amendment to take care of the wording on Page 2.

Proponents' Testimony:

Mr. Olson said he would prefer for the Certificate of Need (CON) program to go away. He said since the government had gotten into it, it would take time to get them out of health care planning. The 1970's model planned the locations, beds and equipment. In the 1980's, he said the federal government started fixing payment. He said it did not matter how many health services there were, because there were no more dollars for health planning. He said today there is a budget of \$23,000 to administer a multi-billion dollar industry. After the bill, only nursing homes will be regulated, he said. He noted the trend is to go to more out-patient and fewer in-patient surgeries. He said the government was not in the lead for this trend, the market was. He said those health care services with a Certificate of Need (CON) are protected from having to adapt, improve and compete.

Mr. Ebzery stated this bill eliminates the CON for home health, ambulatory surgery, and rehabilitation services. He said the

medical industry is a new game now with an old statute. The marketplace should determine the growth, he said. He said the CON is a waste of tax dollars, and should have been repealed 10 years ago. He said even if there is risk of increased competition, it is best for the consumer.

Ms. McCall told the committee the CON is antiquated, costly, and not efficient. She said the market should drive the need and health care services should be competitive. **EXHIBIT (buh53a01)**

Mr. Dawson presented written testimony and said the CON program had been in his bureau since the 1970s.

Opponents' Testimony:

Mr. Anderson opposed the bill because he said competition should be based on need and the CON insures sufficient competition exists within a certain area. He added there has been a significant change in Medicare reimbursement, and the last thing they need to do is de-stabilize. He said the CON is not a difficult process, but is required to demonstrate demand and is similar to drafting a business plan. He said because of the low reimbursement rates by the federal government, only high volume service can make a profit. He said competing agencies will lower volume. He noted the CON is also a tool to prevent fraud.

Dr. Pitts said the committee had been told the marketplace should drive the industry, but in this case they should look at that carefully. He said early on there may be increased competition, but later the hospitals may use their clout to decrease the competition.

Ms. Hansen said she ran a small not-for-profit agency. She testified that the CON process insures services are provided in all areas, and that rural areas receive services as well as urban. She said the CON prevents agencies from only serving the low-cost areas. She felt increased competition would increase costs per visit.

Ms. Jamison said she worked with CONs in her practice as an attorney. She said the CON asks if services will be duplicated and

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would costs be raised. She said the bill is supposed to preserve competition, but in her view, it is really anti-competition and anti-choice. She felt the CON preserves the patient choice, because without it, the hospitals would be free to take over the

entire health care of Montana. She said the impact of having only one provider is dangerous.

Ms. Montoya said having too many health care agencies dilutes the care. She said some counties would not be covered and some would be overwhelmed.

Ms. Boyle said she successfully went through the CON process, and now there are two health care agencies in Butte, but they provide different services, such as pediatric and intravenous services. She felt the CON kept fraud and abuse out of the system.

Ms. Folkerts said without the control of competition in the larger towns, agencies would crop up everywhere. They would create a low volume which would break these businesses, she said. She said employees would lose their jobs and patients would go unserved. She stated this had happened in states which have done away with CON.

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Ms. Wemple said she supported retaining the CON on behalf of small business in Montana.

EXHIBIT (buh53a02) EXHIBIT (buh53a03) EXHIBIT (buh53a04) EXHIBIT (buh53a05)

Informational Witness:

Gloria Hermanson, Montana Assn. of Ambulatory Surgi-Centers, said she was available to answer questions.

Questions from Committee Members and Responses:

REP. LAIBLE asked **Mr. Ebzery** if neighboring states had CONs. **Mr. Ebzery** said Wyoming did not and redirected the question to **Mr. Dawson**. He said North Dakota, Idaho, and South Dakota did not. He added his department was supporting the bill because they have not had but one or two CON applications in two years.

REP. LAWSON asked **Mr. Dawson** about the number of applications for CONs in the past several years. **Mr. Dawson** presented a handout with these figures. **EXHIBIT (buh53a06)**

REP. BOOKOUT-REINICKE asked how much a CON cost. **Ms. Jamison** estimated it cost \$10,000-\$15,000.

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REP. GALLIK asked **Mr. Dawson** how long the CON process was. **Mr. Dawson** provided a pamphlet with this information.

EXHIBIT (buh53a07)

REP. MATTHEWS asked if this bill would have a negative impact on people in Eastern Montana. **Mr. Dawson** said he did not think it would be a negative impact because it would open the process for home health agencies.

Closing by Sponsor:

SEN. JOHNSON asked the committee to concentrate on what the bill was trying to do. He said it was trying to expand the services available to the people of Montana, rather than decrease them.

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HEARING ON SB392

Sponsor: **SEN. JOHN COBB, SD25, AUGUSTA**

Proponents: **Claudia Clifford, Insurance Commissioner's Office**
Tom Bilodeau, citizen

Opponents: **Jacqueline Lenmark, American Insurance Assn.**
John Metropolous, NAI
Dwight Easton, Farmers Insurance
Gregg Van Horssen, State Farm Insurance
Roger McGlenn, IIAM

Opening Statement by Sponsor:

SEN. JOHN COBB, SD25, AUGUSTA, said this bill provides that auto insurance cannot be subject to cancellation because of a collision with a wild animal. He noted the bill was requested by the State Auditor. He presented a chart on collisions with animals. **EXHIBIT (buh53a08)**

Proponents' Testimony:

Ms. Clifford said a constituent of **SEN. COBB's** had his auto insurance cancelled as a result of hitting an animal. She

presented written testimony explaining the bill.

EXHIBIT (buh53a09)

Mr. Bilodeau told how he had backed into a truck, and then three weeks later his wife had hit a deer on MacDonald Pass. The deer collision caused \$1200 in damage. He said he called the police and the fur was visible on the van. Two months later he received a notice of non-renewal. He noted the truck incident had been his first accident ever and the deer collision was the first animal collision. He said he appealed the decision to his insurance company, they relented and let his insurance continue. He added he thought the bill made sense.

Opponents' Testimony:

Ms. Lenmark said her all of her members opposed the bill.

Mr. Metropolous said he had strong opposition to the bill and technical concerns. He said Section 1 unfairly discriminates. He maintained that single loss cancellations and non-renewals do not happen now. He said that instead of encouraging defensive driving the bill encourages fraud. He said most often there are no witnesses to these accidents and no proof. He said it is poor policy to put special exceptions in insurance codes because these will lead to more exceptions. He said the bill would put Montana at odds and apart from the rest of the country. He said this would not be good for competition which attracts more insurers and which will ultimately lower prices.

Mr. Easton said there are 97,000 vehicles in Montana and most individuals have no accidents. An even smaller percentage of people have accidents with animals, he said. He noted that of 42,000 comprehensive claims, only 10% were due to animals, and those who had multiple collisions with animals were less than 1%. He added that most companies do not take non-renewable action after a single hit. Even then, he noted, they can still find insurance in Montana, but it will be based on the proper risk rate.

Mr. Van Horssen said first of all he wanted to clarify that insurance companies were not in the business of taking people off the books. Instead, the insurance companies want to keep people on the books and keep the premiums. However, when some individuals represent a higher risk, it is a business decision to take them off the books. He said there are single vehicle accidents, not just with deer, but with game, fur-bearing or predatory animals. He said a bill like this creates the possibility of being used to invoke reasons for going off the

road which are not due to an animal, and when there is no evidence of what has happened.

Mr. McGlenn said agents counsel clients if they have had a number of accidents they should be careful. He said frequency is a concern, especially after a person has hit 2 or 3 animals and replaced a couple of windshields.

Questions from Committee Members and Responses:

REP. PRICE asked **SEN. COBB** if there was a provision for domestic livestock. **SEN. COBB** said that was definitely left out as out was covered in another bill.

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REP. BOOKOUT-REINCKE asked **Mr. VanHorssen** if the bill could be amended to say the insurance couldn't be cancelled after the first collision with an animal. **Mr. VanHorssen** said unless the insurance company tells the policy holder before they purchase the policy that they will cancel for a single issue, they cannot do it.

Closing by Sponsor:

SEN. COBB said three insurance agents had told him they had to get rid of people because they had hit deer. Also, he pointed out that if a person hits a deer they are supposed to report it to the police so that would be proof. He said the bill had been amended to say the premium could be raised, so it would not stop the insurance companies from doing that.

{Tape : 3; Side : A; Approx. Time Counter : 13}

HEARING ON SB141

Sponsor: **SEN. EMILY STONINGTON, SD15, BOZEMAN**

Proponents: **John Frohnmayer, self**
Darrell Holzer, AFL-CIO
Tom Bilodeau, MEA-MFT
Sami Butler, Montana Nurses Assn.

Opponents: None

Opening Statement by Sponsor:

SEN. EMILY STONINGTON, SD15, BOZEMAN, said this bill would enable an employee to have access to their own personnel record. She called this a good business practice bill and protection for both employees and employers. Open disclosure of these records would prevent employees from having to sue to have access to these records. She said an attorney in Bozeman had brought this problem to her attention.

Proponents' Testimony:

Mr. Frohnmayer said the problem arose when out-of-state lawyers said "show me a statute which says I have to." He said he had heard the argument it was a privacy issue for the employer, but suppose an employee got fired, got some interviews, didn't get a job and wondered what was going on. He said this bill has virtue for the state, employees, or employers. He pointed out that an employee could get five merit raises, get "sideways" with the boss, and then get fired. He said the bill is consistent with the Constitution of Montana and the right the know what is in public records.

Mr. Holzer said this bill is an excellent employee-employer protection provision. He added it is good to review one's credit history so this is reasonable, too.

Mr. Bilodeau said his members have contractual rights to do this across most of the state. He said this bill is in compliance with Montana's policy of open records. He thought it would incur marginal costs and was good business legislation.

Ms. Butler said she supported the bill.

Opponents' Testimony:

The National Federation of Independent Businesses submitted a letter of opposition. **EXHIBIT** (buh53a10)

The Montana Contractors Assn. submitted a letter of opposition. **EXHIBIT** (buh53a11)

Questions from Committee Members and Responses:

REP. BOOKOUT-REINICKE asked if employees could make copies of their files. **SEN. STONINGTON** said she would assume so. The question was redirected to **Mr. Frohnmayer** who said that was a

good question, and the bill did not say "copy," but it could be amended to say "copy."

REP. BOOKOUT-REINICKE asked **Mr. Holder** about the date of the bill and asked if a retroactive date would help the man involved in the lawsuit to get his records. **Mr. Holder** said yes, but he did not want to jeopardize the bill.

REP. JUNEAU asked **Mr. Frohnmayer** how many years the employer was required to maintain the records. He said that was not included in this bill, and it was up to the employer. **REP. JUNEAU** asked if the file could be terminated with employment. **REP. JUNEAU** said yes, but that would be stupid to do.

REP. LAIBLE asked if the bill would allow an attorney to inspect a client's records. **Mr. Frohnmayer** said it would.

REP. BITNEY asked if an employee was fired and applied for a new job, if the prospective employer had any rights to inspect records or disciplinary action. **Mr. Frohnmayer** said the bill would have no effect on this. He said the signature of an employee on disciplinary action means they received notice, not that they concurred. *{Tape : 3; Side : B; Approx.Time Counter : 0}*

REP. BROWN asked **Mr. Frohnmayer** who owns the file. He replied that the employer owns the file, but the court will grant a request to access.

REP. LAIBLE asked **Mr. Frohnmayer** if there were laws similar to this in other states. He replied there were many other states which have this statute, and if fact, this statute was copied from one of the other states.

Closing by Sponsor:

SEN. STONINGTON said one issue came up in the Senate concerning what if the employer doesn't even have a file, as in a "mom and pop" operation. She said the wording should be plain that only "if" the employer maintains records, the bill does not require an employer to maintain personnel files. She said the amendments offered by **REP. BOOKOUT-REINICKE** were good ideas, and she hoped the committee would find favorable concurrence.

EXECUTIVE ACTION ON SB164

Motion: **REP. LAIBLE** moved that **SB164 BE CONCURRED IN.**

Discussion:

REP. LAIBLE said he was concerned with Section 3 and offered amendments to address his concerns. **EXHIBIT (buh53a12)**

Mr. Higgins said the amendments struck the regulation that claims by adjusted by an in-state adjuster, changed the 48 hour time period required to produce documents, and deleted some superfluous language.

REP. LAIBLE said this will give a choice of the best way to effect a claim and does not hurt the in-state adjuster because the cost is less. He noted this would be particularly helpful to e-commerce.

REP. GALVIN-HALCRO presented the committee a fact sheet of which states allow out-of-state adjusters and the number of out-of-state claims adjusted in Montana. She said she thought the bill was fine without the amendment. **EXHIBIT (buh53a13)**

REP. PRICE asked to segregate 1,2 & 3 from the amendments. He said he had concerns about Section 3 but would like to maintain in-state adjusters.

REP. BITNEY asked **REP. LAIBLE** how he thought the segregation affected the amendment.

REP. LAIBLE said they should look at the comparison sheet.

REP. BROWN said they should think about companies that might be considering coming here to do business. He said this bill restricts opportunities so they may not even consider coming here. He said, "Let's make it so more people want to come here to do business."

REP MATTHEWS said the committee was told in testimony Section 3 would be the controversial part of this bill as out-of-state adjusters are at a high risk of making mistakes. He said this was why he would vote no.

REP. GALVIN-HALCRO asked **REP. PRICE** if the in-state adjuster language had been in administrative rule since 1972. **REP. PRICE** said it had.

REP. GALLIK said he did not like the bill and would vote against it. He wished it would include all other kinds of insurance. He said it was difficult to work with out-of-state adjusters because they did not understand Montana law and geography.

REP. PRICE said this is workmen's compensation and nothing else, it is not auto. He did not feel it restricted the marketplace, but the problem was with other people not understanding Montana laws.

Vote: Motion failed 6-13 with Bitney, Brown, Laible, McKenney, Rome, and Whitaker voting aye.

REP. LAIBLE said he was still in favor of 4, 7 and 8.

REP. GALLIK asked him why.

REP. MATTHEWS said it would be a mistake to pass the amendment.

Mr. Higgins said the language was connected to the first half of the segregated motion.

REP. LAIBLE said he didn't segregate it, **REP. PRICE** did, so what was his intention.

REP. PRICE said he had no intention other than the in-state adjuster.

CHAIRMAN MCKENNEY asked **Ms. Lenmark** to discuss the amendments.

Ms. Lenmark said that now the in-state adjuster was rejected, the language which dealt with records was also rejected. She said the insurance industry would like the ability to have a reasonable amount of time to get files from another location.

REP. PRICE withdrew his motion.

REP. GALLIK moved to table the remainder of the amendments.

CHAIRMAN MCKENNEY said that would not work and called for a voice vote on the second amendment.

Vote: Motion failed 0-19.

CHAIRMAN MCKENNEY asked for the discussion to return to the bill.

Motion: **REP. MATTHEWS** moved that **SB164 BE CONCURRED IN.**

Discussion:

REP. LAIBLE said now he opposed the bill.

Vote: Motion **SB164** carried 17-2 with Laible and Whitaker voting no.

REP. SLITER will carry the bill in the House.

ADJOURNMENT

Adjournment: 11:30 A.M.

REP. JOE MCKENNEY, Chairman

JANE NOFSINGER, Secretary

JM/JN

EXHIBIT (buh53aad)